In their Lordships' opinion the definition in section 2 of ammunition is not wide enough to cover and does not cover grenade bodies alone. Mr. Le Quesne for the respondent contended that as the latter part of the definition covered grenades which were not filled but were designed or adapted to contain any noxious thing, the definition went further than applying to a complete grenade only. While recognising that the definition applies to grenades which are not filled, it does not follow from that that it applies to the component parts of a grenade.

At the hearing before the Judicial Committee, Mr. Le Quesne sought leave to advance an additional ground in support of the respondent's case, namely that "if the six grenade bodies were not 'ammunition' as defined by section 2 of the said Act, they were 'explosives' as defined by the said section, and the appellant was not misled by the error in their description". He sought to contend that the grenade bodies came within that part of the definition of "explosive" quoted above and he also referred to the case of *Lee A Ba* v. *The Public Prosecutor* [2] where the appellant was convicted under the Internal Security Act of having in his possession "ammunition to wit, two hand grenade detonators".

In that case their Lordships accepted the submission that detonators were explosives according to the definition and not ammunition. It would not have been necessary to consider whether grenade detonators came within the definition of "explosive" if the definition of "ammunition" could have been interpreted as applying to parts of a grenade. Their Lordships were of the opinion that the error in nomenclature was of no significance. Section 156 of the Criminal Procedure Code applicable in that case is in similar terms to section 155 quoted above. In that case it was not contended that the accused was misled and their Lordships held that the error in stating the offence was immaterial and that there was no substance in the defence based on the misdescription of detonators as "ammunition".

In that case it was not suggested that section 57(1)(b) of the Internal Security Act creates not one but two offences, one relating to the possession of ammunition and the other to the possession of explosive.

In their Lordships' opinion the ground now sought to be advanced as a reason for the dismissal of the appeal, and sought to be advanced for the first time at the hearing before the Judicial Committee involves the presentation of a very different case to that the accused had to meet at his trial and to that argued before the Federal Court. In the *Lee A Ba* case, *supra*, the accused knew that he was charged with the possession of detonators. In this case the appellant was charged with the possession of six grenades when what was found in his possession was six grenade bodies. Detonators are expressly included in the definition of "explosive". Grenade bodies and the component parts of grenades are not mentioned in any definition in section 2. If it had been alleged against him at his trial that despite the reference to grenades in the definition of ammunition, both grenades and their component parts were covered by that part of the definition of "explosive" quoted above, it may be, their Lordships express no opinion on the matter, that the appellant would have had some answer to the charge.

Their Lordships refused leave to advance this ground as they did not think it right in all the circumstances that such a ground should be allowed to be advanced for the first time at the hearing before them.

For the reasons stated their Lordships have allowed the appeal.

Appeal allowed.

Solicitors: *Gester & Turner; Charles Russell & Co.*

NATESAN v. GOH GOK HOON

[F.C. (Azmi C.J. (Malaya), Ong Hock Thye F.J. & Raja Azlan Shah J.) February 19, 1968]

[K.L. — Federal Court Civil Appeal No. X 66 of 1966]

Landlord and Tenant — Prohibition against subletting — Subletting of premises — Double rent — Order for recovery of possession — Control of Rent Ordinance, 1956, s. 12(1)(b)(i) & (j), 22 — Civil Law Ordinance, 1956, s. 28(4).

This was an appeal from the judgment of Ismail Khan J. setting aside the decision of the president of the sessions court at Malacca (*sub nom. Goh Gok Hoon* v. *Abdul Hamid & Anor.*, [1967] 1 M.L.J. 36).

The respondent, owner of rent-controlled premises brought an action for recovery of possession of the premises, against the tenant, and the appellant, as subtenant, under section 12(1)(b)(i) and (j) of the Control of Rent Ordinance, 1956. In allowing the appeal from the decision of the sessions court, the High Court held that the tenancy was subject to a prohibition against subletting and that the premises was sublet to the appellant in breach of the condition of the tenancy. An order for the delivery of vacant possession was made against the tenant as well as the appellant on the ground that he was not protected by the provision of section 19 of the Ordinance. It was further ordered that the tenant and the appellant were to pay double rent after sixty days in the event of their holding over.

The appeal to the Federal Court was substantially on three grounds: (1) the learned judge was wrong in finding that there was a prohibition against subletting in the tenancy agreement; (2) he should not have considered section (12)(1)(b) of the Control of Rent Ordinance as the provision was not referred to by the respondent's counsel to the court below; (3) he had no power to order the payment of double rent.

Held, dismissing the appeal: (1) on the perusal of the evidence in the record, the learned judge was right in his finding of fact that there was a prohibition against subletting in the tenancy agreement;

(2) as section 12(1)(b) was expressly raised in the statement of claim and constituted the main issue in the claim, the learned judge had not erred in making a finding under it;

(3) in view of the provisions of section 28(4) of the Civil Law Ordinance 1956, read with section 22 of the Control of Rent Ordinance, 1956, an order for payment of double rent can be made against a tenant of rent-controlled premises where an order for recovery of possession of the premises has been made against such tenant. The learned judge was therefore justified in ordering the payment of double rent against both the tenant and the appellant, as sub-tenant.

Cases referred to:—

(1) *Errington* v. *Errington* [1952] 1 All E.R. 149 at p. 155.

(2) *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1957] 3 All E.R. 563 at p. 571.

(3) *Cook* v. *Shoesmith* [1951] 1 K.B. 755.

(4) *Ong Keng Huat* v. *Shaw & Shaw Ltd.* [1957] M.L.J. 46.

FEDERAL COURT.

R. R. Chelliah (*Keith Sellar* with him) for the appellant.

V. L. Kandan for the respondent.

Cur. Adv. Vult.

Azmi C.J. (Malaya): This is an appeal against the judgment of Ismail Khan J. who allowed the appeal against the judgment of the president of the sessions court at Malacca.

The respondent was and still is owner of the premises known as No. 2 Wolferstan Road, Malacca, herein referred to as the said premises, and she brought a suit for the recovery of the said premises in the sessions court against the tenant K. A. Hamid as the tenant and against the appellant as the sub-tenant.

The brief facts of the case would show that the respondent became the owner of the said premises in 1948 when the tenant had been a tenant for some years previously and had been carrying on, on the same premises the business of a restaurant under the name of "K. Abdul Hamid Restaurant".

In February 1961, the respondent's rent collector named Low Yew Hock, noticed the name of the restaurant had been changed to "Letchumi Vilas Restaurant", whereupon he informed the owner of it. The owner immediately instructed a solicitor to give notice in writing to the tenant terminating the tenancy on 30th April 1961. The notice was also served on the appellant as a person in possession, of the said premises.

Upon their refusal to vacate the respondent commenced this action on 30th May 1961 against both the tenant and the appellant on three grounds:—

(1) That neither the tenant nor any member of his family was personally in occupation of the premises or part thereof.

(2) That having sub-let the premises to the appellant the tenant was receiving in respect of such subletting rents which exceeded by more than 10% the rent of the whole premises.

(3) That the tenant was in breach of a prohibition in the tenancy agreement against subletting.

The tenant in his statement of defence stated that he was still the sole proprietor of the business known as K. Abdul Hamid Restaurant and was still residing at the premises and also that he was entitled to remain as a statutory tenant and that the appellant was only a lessee of the said business but not of the premises under an agreement produced by him and marked exhibit P.2, made between them on 12th October 1960. The prohibition against the subletting was denied.

Low Yew Hock, the rent collector, though in his evidence first stated that the tenant was not living on the premises, however, had to admit that he said so merely on information he received.

In his evidence, the tenant explained that he had merely subleased the business of the restaurant but not the premises to the appellant, as he had similarly previously done to two other persons in 1946 and 1958 respectively. The lease of the business was on each occasion, as in the present one for a period of 5 years. The lease to the person previous to the present appellant was however, prematurely terminated before the expiry of the period of 5 years. That explained why he was able to make the present lease to the appellant in 1960. In addition to the execution of Exh. D.2 the tenant also executed a power of attorney Exh. D.7 in favour of the appellant.

The tenant also maintained that he was staying in a room on the first floor of the premises all the time and that the business of the restaurant was being carried on on the ground floor. He also explained that the name "Letchumi Vilas Restaurant" was put up during the festival of the Hindu temple at Cheng in order to attract business. The name was subsequently removed after the service of the notice to quit had been served on the tenant and the appellant.

Both the tenant and the appellant also stated in their evidence that they also made an oral agreement to the effect that the tenant was to be allowed to retain a room on the first floor.

The learned president of the sessions court dismissed the suit. He found that there was no evidence that the tenant or a member of his family was not in occupation of the said premises or any part thereof. He then went on to say that having arrived at the above stated finding (I quote):—

"It followed that it could not be argued that the tenant, after expiration of the notice to quit and as a statutory tenant, as such, had sublet the whole of the premises and had therefore lost his statutory tenancy for non-occupation."

He then went on to refer to Exh. D.2, and for reasons which I need not mention here, he came to the conclusion that Exh. D.2 did not create a sub-tenancy and that the appellant was merely a licensee of the tenant and that as a consequence the question that the tenant having sublet and received excessive rent did not arise. He thereupon dismissed the suit.

The respondent appealed to the High Court and the learned judge allowed the appeal. Before I refer to that judgment, I would like to mention that although a rent receipt was referred to in the evidence of the tenant and apparently a receipt of some kind was produced before the learned judge, there is none in the record of appeal. A printed but blank receipt was produced before us and at the back of the receipt appeared the following words:—

"N.B. No sub-tenancy or change of tenancy will be allowed or recognized without the written consent of the landlord to this effect."

In his judgment the learned judge referred to the three grounds upon which the respondent brought her claim. Then he went on to say this:—

"These are grounds entitling a landlord to recovery of possession by virtue of paragraphs (b), (i) and (j) of section 12(1) of the Ordinance."

He then went on to say that although there was, as he put it, a paucity of evidence given on behalf of the respondent, but nevertheless there were documents from which proper conclusion may be drawn upon the various questions in issue and the most important of all is Exh. D.2. He also pointed out and with respect correctly, that the standard of proof which the learned president thought necessary, namely "beyond reasonable doubt" was clearly wrong as this was not a criminal prosecution and moreover the onus shifted at the various stages of a trial.

In dealing with the grounds of appeal the learned judge referred to paragraph (b) of subsection 1 of section 12 of the Ordinance under which he stated that restriction on the landlord's right of possession are lifted "where an obligation of the tenancy other than the payment of rent has been broken." He then referred to the alleged prohibition against subletting and referred to the printed words on the back of the rent receipt and went on to say that this condition of the tenancy was known to the tenant. He then referred to the tenant's evidence:—

"The landlord has printed on the rent receipt that there should be no subletting."

The learned judge then went on to say that if the tenant was not subject to obligation expressed plainly on the receipt, why was it necessary to persist so strenuously and so long in denying a subletting which the tenant had a right openly to do. He held the view that the three agreements made by the tenant in 1948, 1958 and 1960 were clearly devices to conceal a subletting. He then came to the view that there was therefore, a prohibition against subletting of the said premises by the tenant.

He then considered the next question as to whether the transaction between the tenant and the appellant was in truth a subletting of the premises or not. He referred to the various provisions of the agreement D.2 namely: clause 6 that stipulated that the lessee shall not sublet the premises which provoked the further question according to the judge, that if the appellant was not a sub-tenant why then prohibit him from doing what was beyond his powers?

He then referred to clause 9 which imposed on the appellant an obligation to pay rent to the landlord and to clause 17 which enabled the lessor (the tenant) to take possession of the premises for non-payment of rent. This, according to the judge, necessarily implied that the lessee *i.e.* the appellant was entitled to the undisturbed possession of the premises that is, so long as the rent was paid. Such exclusive possession was, in the view of the judge not merely a hall mark of a tenancy but also a clear proof that the person having such possession was legally a tenant and not a licensee and cited as his authority *Errington* v. *Errington* [1] and *Addiscombe Garden Estates Ltd.* v. *Crabbe.* [2]

The learned judge then pointed out firstly to the absence of provision in Exh. D.2 as to the right of the tenant to retain any portion of the said premises for his own occupation and it would follow therefore that if the tenant had access at all he would do so by leave and licence of the appellant. And that notwithstanding the evidence given by the witnesses to the contrary. He then went on to refer to what in my view is a very important question, namely that it would be difficult to appreciate how this kind of business could be severable from the premises. The very fact that the ingenuity of an experienced advocate and solicitor had not proved successful in separating the business from the premises as two distinct entities demonstrated in the view of the judge, that the lease of the business necessarily included the premises in which the business was carried on.

He then went on to express the view that the power of attorney was a sham and in any case it was merely an instrument to enable the appellant to obtain renewals of the refreshment licence in the name of the tenant. He then went on to say that no fine calculation is needed to prove that in collecting $250 per month for nothing — since the monthly rent of the premises was also paid by the appellant — the tenant as tenant was making a handsome profit out of the tenancy equal to more than 4 times the amount of the rent received by the landlord. The learned judge thereupon concluded that for the

above reasons, the landlord succeeded on all grounds against the tenant and because of the prohibition against subletting she was entitled to an order for possession also against the appellant since he (the appellant) was not (in the judge's view) protected by the provisions of section 19 of the Ordinance. He thereupon ordered that the tenant and the appellant deliver up vacant possession within 60 days of the order and to pay all rents accrued or to accrue until the date of the surrender of possession, and double rent after 60 days in the event of their holding on until execution. As to the costs, because of the conduct of the tenant and appellant, the learned judge considered that he was justified to make an order of costs against them, in the action and also the appeal to him.

Before us, the judgment of Ismail Khan J. was attacked as follows:—

"That the appellate judge was wrong in law and in fact in holding that under the terms of the tenancy agreement the tenant had agreed not to sub-let and was prohibited from sub-letting the premises in whole or in part on the ground that there was no evidence brought by the plaintiff of any such terms, and that the rent receipt upon which the appellate judge placed considerable reliance to support his finding was never put in as evidence before the sessions court, and even if the rent receipt were before the court the terms mentioned in it were imposed *ex post facto* and not agreed at the time of letting or subsequently."

In my view, the learned appellate judge was right in holding the view that the sessions court should have considered also the evidence of the tenant; and his admission as to the existence of such a rent receipt would be sufficient to prove its existence. After all this is a civil matter and the court is entitled to consider also the evidence of the defendant. I would go further that I would with respect agree with the learned judge on his findings and reasons for that finding.

The next argument before us was that an agreement not to sub-let premises cannot be construed as meaning a prohibition against subletting a part of it. *Cook* v. *Shoesmith.*[3] On this point the learned judge had made a finding for reasons which he gave that according to Exh. D.2 the whole premises was sub-let to the appellant. I am not persuaded that the learned judge was wrong in his finding.

As to the next ground of appeal, paragraph (b) of sub-section (1) of section 12 of the Ordinance says as follows:—

"No order or judgment for the recovery of or for possession of any premises comprised in a tenancy shall be made or given except in the following cases namely:—

(b) where any obligation of the tenancy other than payment of rent (whether under the contract of tenancy or under the provisions of this Ordinance), so far as the obligation is consistent with the provisions of this Ordinance, has been broken or not performed by the tenant and the court considers it reasonable that such order or judgment be made or given:"

In reference to this ground Mr. Chelliah referred to the judgment of the learned appellate judge which, however, I myself have previously referred to in this judgment and he told us that plaintiff's counsel never read the said paragraph (b) of the section to the court below. This might be true, but in my view plaintiff in her statement of claim asked for possession and since the ground upon which she made her claim for possession was not for non-payment of rent, the court would still be bound to consider whether in the circumstances it should allow the plaintiff's claim for recovery or possession or not. In other words this is a question of law and relevant to the matter. In my view therefore, the judge had rightly considered the said paragraph (b) of the section. Indeed, he must. For these reasons in my view this ground of appeal must also fail.

As to ground 5 against the order made by the learned appellate judge that the appellant also should pay double rent, I have had the opportunity of reading the judgment of my brother Azlan Shah J. with which I agree and I would therefore say that the appeal against this point be dismissed. As to the question of costs, the learned trial judge has given his reasons for awarding costs against the appellant and the tenant and I see no reason why we should interfere with that order. The appeal against that order is therefore also dismissed.

As to the last ground. I am afraid I cannot understand this ground as I understand from the provisions of section 19 no order for recovery or possession shall be made against a sub-tenant unless (a) the court is satisfied that such tenant was prohibited by the term of his tenancy from sub-letting or that such sub-tenant has used the premises for illegal or immoral purposes and (b) that such sub-tenant has been made a party to the proceedings or has had an opportunity of being heard. In my view, in this case since the court has found that the tenant was prohibited by the terms of his tenancy from subletting and that the sub-tenant has been made a party to the proceedings, and having considered paragraph (b) of sub-section (1) of section 12, the learned judge had exercised his discretion in making the order he made, I would therefore say that this ground of appeal also fails.

I would accordingly dismiss this appeal and affirm the judgment of Ismail Khan J. including his order as to costs. The costs of this appeal must also be paid by the appellant.

Ong Hock Thye F.J.: This is an appeal against the judgment of Ismail Khan J., given in the High Court at Malacca, setting aside the judgment of the president of the sessions court and ordering that the respondent landlord (plaintiff in the action) do recover possession of premises No. 2 Wolferstan Road, Malacca, against one Abdul Hamid (the tenant) and the present

appellant (the occupier) holding under a title the nature of which was disputed. Against the judgment only the present appellant has appealed.

The premises in question were rent-controlled premises to which the Control Rent Ordinance 1956 applied. Abdul Hamid had already been carrying on an eating shop business therein for some years prior to the respondent becoming his landlord in 1948; his shop displayed the sign-board "K. Abdul Hamid Restaurant." In February 1961 this name was changed from that of a Muslim into a Hindu eating shop "Letchumi Vilas Restaurant," indicating some mutation in the tenancy. Thereupon the respondent served notice on Abdul Hamid, as tenant, terminating his tenancy, at the same time serving a copy of such notice on this appellant as the person in occupation.

In an action for possession brought against Abdul Hamid and this appellant in the sessions court at Malacca, the claim was made on three grounds, that is to say, (i) for breach of a condition of the tenancy by subletting; (ii) for not occupying the premises either personally or by any member of his family and (iii) for subletting at a rent in excess of the maximum permitted rent. These were the grounds for recovering possession provided for by paragraphs (b), (i) and (j) of section 12(1) of the Ordinance.

The defence traversed all material allegations relating to these three grounds. In particular both defendants strenuously denied any subletting of the premises, whether wholly or in part. Taking the view that this appellant was merely a licensee of Abdul Hamid's and that the landlord had failed "to prove beyond reasonable doubt" non-occupation of the premises by Abdul Hamid personally, the learned president of the sessions court dismissed the action. His decision on the other two points had made it unnecessary to deal with the claim made under paragraph (b). On appeal, however, this judgment was reversed by the High Court at Malacca, Ismail Khan J. holding that the landlord was entitled to succeed on all grounds against Abdul Hamid, as well as against this appellant on the ground that he was not protected by the provisions of section 19 of the Ordinance. To put it briefly, the learned judge held that the "documents, admissions and facts not in dispute" abundantly justified his finding of fact that the tenancy was subject to a prohibition against subletting, known and agreed to for many years by the tenant himself, and that the agreement between the tenant and this appellant was a sham designed to effect a subletting in breach of a condition of the tenancy. Having perused the evidence on the record with every care, I am of opinion that the learned judge was right in his finding of fact and equally right in the inferences he had drawn from the primary facts not open to dispute.

The striking feature in the appellant's case is that, in the first instance, he and his co-defendant strenuously maintained that there never was a sub-letting. "No, I am not a sub-tenant", declared this appellant in his evidence, "never at any time." The judge's finding of fact, on the evidence, was otherwise. The appellant now changes his stand, contending that the judge was in error because there was never any prohibition against sub-letting. That, of course, was purely a question of fact. The judgment covered 6 pages relating to this point alone, setting out fully the reasons which led the judge to entertain "little doubt that there was a prohibition against sub-letting which the tenant accepted as an obligation of his tenancy." With those reasons I fully agree: at any rate the argument by counsel for the appellant has not persuaded me in any way that the learned judge was in error. It was pointed out, for example, that the rent receipt, which the judge referred to, was never admitted. Even so, I consider that the admissions made in court by the defendants sufficed to make the receipt itself superfluous and immaterial. It was also argued that the learned judge erred in law in making a finding under paragraph (b) of section 12(1) when the same was not asked for. The simple answer to this criticism is that paragraph (b) was expressly raised in paragraph 7 of the statement of claim and constituted the main issue. The president of the sessions court had, for the obvious reason explained earlier, omitted to deal with this issue, but, as the learned judge pointed out, the appeal to him was by way of rehearing. Consequently, he was perfectly right to deal with this point, on which the decision in fact turned.

While accepting the finding of the learned judge, I would point out that I have not done so blindly because a finding of fact generally is not disturbed on appeal. Testing the truth of the defence story for myself, I am more than satisfied that, for instance, both the tenant and this appellant were attempting to deceive the court when they said that the tenant was at all relevant times residing in the premises. Clause 4 of the agreement expressly prohibited any change of the business name "K. Abdul Hamid Restaurant". Would this appellant have attempted or been able to change the name of the eating shop in defiance of the tenant had the latter been a resident in the premises, or even in the town of Malacca? The answer is plain.

It seems to me ridiculous that, after having taken the stand that there never was any subletting, the appellant now resiles completely from that position to argue that there was never any prohibition against subletting. The simple answer, again, is that as a third party, he was in no better position than the tenant himself to know the truth. The subterfuges resorted to by the tenant not once, but three times, to circumvent

the Ordinance, speaks more eloquently than words. Consequently the finding of fact against the tenant, who has not appealed, concludes the matter so far as this appellant is concerned. For my own part, I would grant little credit to a party who claimed, in the first place, that the Ordinance did not apply and now contends that it did. In any event, I think this appellant has no cause for complaint whatsoever since he has managed to hold on till now to premises which, under the very agreement constituting his asserted title to occupation, he should have vacated by October 12, 1965, almost two and a half years ago.

Above everything else is the fact that learned counsel for the appellant now sets up a case which not only is not founded upon, but contrary to, this appellant's own pleadings. We should be creating an absurd precedent to consider allowing this appeal, on any ground, without even any application for consequential amendment of the defence pleaded. Any amendment, at this stage, setting up a case which amounts to a *volte-face,* is naturally out of the question.

I would accordingly dismiss this appeal and affirm the judgment of Ismail Khan J., including his order as to costs; his judgment clearly shows that he had borne in mind the proviso to section 13 when making such order. I would also award the respondent the costs of this appeal for the same reason.

Raja Azlan Shah J.: The learned judge has delivered an elaborate and, in my view, a most convincing judgment with which I agree.

I venture to express my own view on the question of double rent which the learned judge ordered against both the tenant and the sub-tenant, *i.e.* the present appellant on the expiry of the sixty days period in the event of their holding over. In my judgment, there was clearly an order for delivery of possession against both the tenant and the sub-tenant who the learned judge found has forfeited his claim to the protection of the provisions of section 19 of the Control of Rent Ordinance 1956. In those circumstances it must follow that in view of the provisions of section 28(4) of the Civil Law Ordinance 1956 read with section 22 of the Control of Rent Ordinance the learned judge was justified in ordering double rent against both the tenant and the present appellant. The decision of this court in the case of *Ong Keng Huat* v. *Shaw & Shaw Ltd.*[4] must be distinguished on the facts. There the learned trial judge had no power to give judgment in accordance with the landlord's claim for double rent from November 30, 1954 which was the date the tenant was asked to deliver up vacant possession. It is quite plain that as on that date no court order for recovery of possession was made against the said tenant and consequently the case was hit by the provisions of section 13(4) of the Civil Law Ordinance (Laws of the Straits Settlements, Vol. II, Cap. 42, which bears semblance to section 28(4) of our Civil Law Ordinance) read with section 17 of the Control of Rent Ordinance 1948 (now section 22).

I agree that the whole appeal be dismissed.

Appeal dismissed.

Solicitors: *Sault, Keith Sellar & Co.; Shearn, Delamore & Co.*

YANG CHIN LANG v. TAN CHONG & SONS MOTOR CO. LTD.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) & Ong Hock Thye F.J.) February 19, 1968]

[K.L. — Federal Court Civil Appeal No. X85 of 1966]

Contract — Guarantee — Construction — Credit facilities in excess of maximum amount guaranteed — Effect of, on guarantee.

Stare decisis — Case indistinguishable on facts.

On February 19, 1964, the appellant signed a letter of guarantee as guarantor for the debt due by his son who, as agent of the respondents, cardistributors, had been supplied with cars on credit for sale by him. The relevant part of the letter of guarantee stated that the appellant "guarantee the performance and fulfilment by the said Yang Pin Joo of any obligation and liabilities due from him to you on the understanding that:— (a) the maximum credit balance monthly shall not exceed $100,000". There was $129,911 due to the respondents by the appellant's son at the date of the letter of guarantee. The letter of guarantee was signed in consideration of the respondents' forbearance to sue the appellant's son and to grant further credit facilities to him. In an action by the respondents on the letter of guarantee, the trial judge held that the appellant was liable on the guarantee to pay the respondents $100,000 ([1967] 1 M.L.J. 123). On appeal, the appellant contended that he was relieved from liability as the credit facilities given to his son, having exceeded $100,000, was contrary to condition (a) of the letter of guarantee and was therefore void *ab initio.*

Held, dismissing the appeal: the learned trial judge did not misdirect himself that the case of *Oriental Bank of Malaya Ltd.* v. *Subramaniam* [1] was applicable and the decision of the trial judge should be affirmed.

Cases referred to:—

(1) *Oriental Bank of Malaya Ltd.* v. *Subramaniam* [1958] M.L.J. 35, C.A.

(2) *Lloyd's* v. *Harper* (1880), 16 Ch. D. 290.

(3) *Blest* v. *Brown* (1862), 6 L.T. 620; 4 D.F. & J. 367.

(4) *Ward* v. *The National Bank of New Zealand* (1883), 8 App. Cas. 755 at p. 763.

(5) *Rickaby* v. *Lewis* (1905), 22 T.L.R. 130 at p. 131.

FEDERAL COURT.

S. K. D. Peddie for the appellant.

V. K. Palasuntharam (*Eugene Lye* with him) for the respondents.

Barakbah L.P.: The question to be determined in this appeal is whether the appellant is